

REMARKS/ARGUMENTS

Claims 1 – 24 are currently pending and rejected.

The applicants amend claims 1, 2, 4 – 12, 14 – 16, and 18 – 24, and add new claims 25 – 49. The applicants respectfully assert that claims 1 – 49, as amended, are in condition for allowance for at least the reasons discussed below.

Rejection against claims 1, 2, 4 – 6, 8 – 12, 14 – 21, 23 and 24 on double patenting grounds

The applicants respectfully disagree with the examiner's rejection against claims 1, 2, 4 – 6, 8 – 12, 14 – 21, 23 and 24 based on nonstatutory double patenting over claims 12, 13, and 19 – 22 of U.S. Patent 6,731,600; and respectfully assert that claims 1, 2, 4 – 6, 8 – 12, 14 – 21, 23 and 24 as amended are patentably distinct from claims 12, 13, and 19 – 22 of U.S. Patent 6,731,600. The applicants, however, also submit the enclosed terminal disclaimer.

Rejection against claims 1 – 5

The applicants respectfully assert that claim 1, as amended, is patentable over U.S. Patent 6,327,274 (Ravikanth) at least because Ravikanth fails to disclose modifying a base period in response to the transmission latency being less than 0.

The applicants' claim 1, as amended, recites in part, a method of determining network conditions that includes subtracting a base period from a transmission period of a data packet to determine a transmission latency; and in response to the transmission latency being less than 0, modifying the base period.

For example, as shown in Fig. 3 and discussed in paragraphs 34 – 48, a transmission latency is a measure of how quickly, relative to a reference period, *i.e.* base period, a data packet is received after the packet is sent. To determine the transmission latency, the base period is subtracted from the transmission period for the

data packet. The base period can be the transmission period of a previously received data packet. The previously received data packet can be the packet that was received immediately before the current data packet, or the previously received data packet can be a packet that was received anytime before the immediately preceding data packet. By modifying the base period after the transmission latency is determined to be less than 0, *i.e.* when the base period is longer than the transmission period, the transmission latency for future data packets can be determined.

In contrast, Ravikanth fails to disclose modifying a base period in response to the transmission latency being less than 0. Ravikanth appears to disclose a method for detecting a skew between two clocks. Clock skew or timing skew is the difference in the time identified by two different clocks at the same moment in time. For example at time A, clock 1 might show a time of A-1, and clock 2 might show a time of A+1. As part of Ravikanth's method for detecting a skew between two clocks, the jitter between the transmission periods of two data packets that are sent sequentially is determined by subtracting the transmission period of the second data packet from the transmission period of the first data packet. By averaging successive jitter values over time Ravikanth approximates the relative clock skew. Ravikanth's method does not appear to determine whether or not the jitter between two transmission periods increases or decreases over time. Therefore, unlike the applicants' claimed method, Ravikanth's method does not include modifying a base period in response to the transmission latency being less than 0.

Claims 2 – 5, and 25 – 35, as amended, are patentable at least by virtue of their dependencies on amended claim 1.

Rejection against claims 6 – 10

Claim 6, as amended, is patentable over Ravikanth at least for reasons similar to those recited above in support of amended claim 1 over Ravikanth.

Claims 7 – 10, and 36 – 41, as amended, are patentable at least by virtue of their dependencies on amended claim 6.

Rejection against claims 11 – 15

Claim 11, as amended, is patentable over Ravikanth at least for reasons similar to those recited above in support of amended claim 1 over Ravikanth.

Claims 12 – 15, as amended, are patentable at least by virtue of their dependencies on amended claim 11.

Rejection against claims 16 – 19

The applicants respectfully assert that claim 16, as amended, is patentable over Ravikanth and U.S. Patent 5,802,106 (Packer) at least because Ravikanth and Packer each fails to disclose modifying a base period in response to the transmission latency being less than 0. As discussed above in the argument for the allowability of amended claim 1 over Ravikanth, Ravikanth fails to disclose modifying a base period in response to the transmission latency being less than 0. Packer appears to disclose a method for determining the flow rate of a data packet, i.e. the transmission period. Packer does not disclose determining a transmission latency between transmission periods of the data packets. Therefore, unlike the applicants' claimed method, Packer's method does not include modifying a base period in response to the transmission latency being less than 0.

Claims 17 – 19 and 42 – 48, as amended, are patentable at least by virtue of their dependencies on amended claim 16.

Rejection against claims 20 – 24

Claim 20, as amended, is patentable over Ravikanth at least for reasons similar to those recited above in support of amended claim 1 over Ravikanth.

Claims 21 – 24 and 49, as amended, are patentable at least by virtue of their dependencies on amended claim 20.

Conclusion

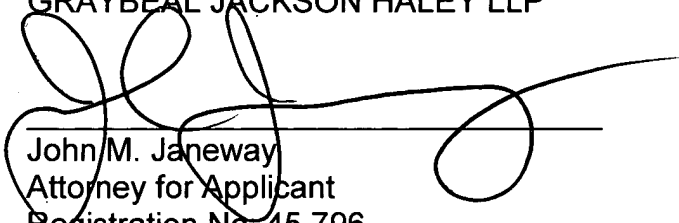
The applicants respectfully request that the examiner withdraw the rejection against claims 1 – 24, as amended, and issue an allowance for claims 1 – 49, as amended.

If, after considering this response, the examiner believes the claims should not be allowed, the applicants respectfully request that before issuing an Office Action, the examiner call the applicants' attorney, Mr. Janeway (425-455- 5575), to schedule a telephone conference to further the prosecution of the claims.

Should any additional fees be required, please charge them to Deposit Account No. 07-1897.

Dated this 16th day of May 2008.

Respectfully submitted,
GRAYBEAL JACKSON HALEY LLP



John M. Janeway
Attorney for Applicant
Registration No. 45,796
155-108th Avenue N.E., Ste. 350
Bellevue, WA 98004-5973
(425) 455-5575